IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4304 OF 2005

Pandit Baburao Kale & Ors. : Petitioners
(Orig.Defts.1-3 in
R.C.S.No.136/2004)

V/s.

Sanjay Ishwar Deokar : Respondent
(Ori.Plff.in R.C.S.
No.136 of 2004)

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Mr.Girish S. Godbole for the petitioners.

None present for the respondent.

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CORAM : S.A. BOBDE, J.

August 3, 2005.

P.C.:

1. By this petition, the petitioners have challenged the order of the learned IIIrd Addl. District Judge, Solapur, in Civil Misc. Appeal No.4 of 2005 decided on 8.4.2005. By the impugned order, the learned Addl. District Judge has upheld the grant of injunction by the trial Court in favour of the respondent.

2. The sole respondent filed a suit for a right of way

through gat no.196. Gat no.196 was partitioned on 6.11.1990 by the defendants's predecessors who all belong to Kale family. The plaintiff purchased the land from Bajrang who had been allotted gat no.196/1. In this partition deed, a 10 feet cart-way is preserved and is shown as passing through the middle of gat no.196 which runs North-South. The partition deed shows that this cart-way is kept in common for user of the parties. The appellate Court has observed that there is a reference to this cart-way in at least four places in the partition deed and, therefore, the plaintiff who has purchased the share of Bajrang i.e. gat no.196/1 is entitled to an injunction restraining the petitioners from disturbing their right of way.

3. Mr.Godbole, the learned counsel for the petitioners, submitted that there is a provision made for this road in the partition deed which was never acted upon. The appellate Court has answered this argument as follows:-

> "Moreover there is nothing on record to show that Bajrang Kale was not using the disputed suit way till he sold gat No.196/1 to the plaintiff. There is nothing on record to show that after the purchase of

> gat No.196/1 plaintiff had stopped to use the disputed suit way. To the contrary according to the plaintiff from the date of purchase till the date of obstruction by the defendants was using the disputed suit way as easementary right."

I see no error of law, jurisdictional or otherwise in the order of the Courts below.

4. The learned counsel for the petitioners further submitted that the sale deed under which the respondent has purchased the suit land does not cover a right of way. That, in my view, is not conclusive of the matter. So also the fact that the mutation entries which show that the respondent has another way of access to his field is also not conclusive.

5. In this view of the matter, there is no merit in the petition which is hereby dismissed.

Sd/-

S.A. BOBDE, J.